

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT

In re

JAMES L. HELM,

On Habeas Corpus.

F042947

OPINION

THE COURT*

ORIGINAL PROCEEDINGS; petition for writ of habeas corpus.

James L. Helm, in pro. per., for Petitioner.

No appearance for Respondent.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Jo Graves, Assistant Attorney General, for Real Party In Interest.

-ooOoo-

STATEMENT OF FACTS

On May 15, 2003, petitioner, James L. Helm, filed in this court a “Petition For Writ Of Habeas Corpus” raising issues regarding his failure to timely file a notice of

* Before Vartabedian, Acting P.J., Cornell, J., and Gomes, J.

appeal from his May 2002 felony conviction in Stanislaus County Superior Court. The conviction followed a jury trial.

Petitioner claims that appointed trial counsel failed to timely file a notice of appeal on his behalf.

On May 7, 2003, this court granted the Attorney General leave to file a response to the petition for writ of habeas corpus. Our order further stated that the “failure to file a response shall be deemed to constitute a consent that, if this court determines upon the merits of said application that relief should issue, appropriate relief should issue without further proceedings [citations].” No response was filed by the Attorney General.

Also on May 7, 2003, this court sent a letter to petitioner’s trial counsel inviting counsel to respond to the allegations in the petition. On May 14, 2003, former counsel filed a declaration in this court stating the notice of appeal was not filed due to inadvertence or clerical error.

DISCUSSION

Judgment is rendered at the time it is orally pronounced. (*People v. Thomas* (1959) 52 Cal.2d 521, 529, fn. 3.) A notice of appeal must be filed within 60 days of the date of the rendition of the judgment. (Cal. Rules of Court, rule 31(a).) A criminal defendant has the burden of timely filing a notice of appeal, but the burden may be delegated to trial counsel. (*In re Fountain* (1977) 74 Cal.App.3d 715, 719.) However, this court is vested with discretion to grant a petitioner relief from default in timely filing a notice of appeal and/or request for certificate of probable cause as required under California Rules of Court, rule 31(a) and (d) and Penal Code section 1237.5.

There has developed a judicial policy that reasonable doubts as to the veracity of a petitioner's allegations in these matters are to be resolved in favor of the petitioner in order to protect the right of appeal, as well as the policy that this court's power to grant relief from default in these instances be liberally exercised so that in proper cases appeal rights will not be forfeited on technical grounds. (Cf. *People v. Rodriguez* (1971) 4

Cal.3d 73, 79; see also *In re Benoit* (1973) 10 Cal.3d 72, 89.) When applicable, the doctrine of constructive filing allows an untimely filed notice of appeal to be deemed timely if the defendant has relied upon the promise of trial counsel to timely file the notice on defendant's behalf. (*In re Benoit, supra*, 10 Cal.3d at pp. 86-87.) The doctrine protects defendants who have been “lulled into a false sense of security” by trial counsel's promise. (*Id.* at p. 87.) In addition, appointed counsel in the trial court has a statutorily imposed duty to “execute and file” a timely notice of appeal where “arguably meritorious grounds exist for reversal or modification of the judgment.” (Pen. Code, § 1240.1, subd. (b).)

In the present case, trial counsel did not timely file a notice of appeal on petitioner’s behalf. Counsel likewise did not advise petitioner to file these documents himself.

DISPOSITION

Petitioner is directed to cause a notice of appeal to be filed on or before June 30, 2003, in Stanislaus County Superior Court action No. 1022889.

Let a petition for writ of habeas corpus issue directing the Clerk of the Stanislaus County Superior Court, if he receives said notice on or before June 30, 2003, to file the notice, to treat it as being timely filed, and to proceed with the preparation of the record on appeal in accordance with the applicable rules of the California Rules of Court.